A VINDICATION OF His Majesties *GOVERNMENT, & JUDICATURES,* IN SCOTLAND;

From some Aspersions thrown on them by scandalous Pamphlets, and News-books: and especially, with Relation to the late Earl of *Argiles* Process.

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A Vindication of His Majesties Government, and Judicatures, in SCOTLAND, &c.

ALL wise and sober Men in *Scotland*, do with a just mixture of pity, and contempt, Read those infamous Pamphlets, wherein this Kingdom is so maliciously traduced by some in our Neighbour-Nation; and when they consider that the Licentiousness of the Press, does so much weaken all Government, corrupt all Intelligence, and blast so unavoidably the Reputation of the best, and most Innocent: They conclude justly, that to deny their King the necessary priviledge and prerogative of restraining the Press, were to refuse to the Master of a Ship, the power to prevent its Leaking: To deny the Magistrat the power of punishing these, who corrupt the Springs and Fountains of a City: And to refuse to the Master of a Family, the Power of Chastising his Servants when they rail at one another. I am very desirous also to be informed, how the King can by the Priviledge and Prerogative of His Crown, have the absolute power of making Peace and War? Calling and Dissolving of Parliaments, and a Negative Voice in them? and yet should be denyed the far less priviledge of restraining the Press: Especially after so many proofs of its having been so dangerous, and Seditious. How the Magistrats of the meanest Hanse-

Town ſhould enjoy this priviledge, and yet that it ſhould bedeny'd to the King of *Great-Britain*. Or how he ſhould have the power to puniſh *Lybels*, and yet ſhould want the power of ſtopping them, it being both much ſafer, and eaſier, to prevent, then to puniſh. Nor can I diſſemble, that our Nation has found the happy Effects of diſcharging all Printing without Licence by an expreſs *Statute*, whereby we find the publick Government, and every privat Mans Reputation moſt happily ſecured: Whilſt on the other hand, It is very obſervable, that that *Peer*, who told it was not yet time to reſtrain the *Preſs* in *England*, has liv'd to ſee a famous Library of Libels and Paſquills againſt himſelf, for the Conviction of this Age, and the Information of thoſe who ſhall ſucceed us.

We glory alſo in the juſtice of our Law, that has by a ſpecial *Statute*, Ordained all ſuch to be ſeverely puniſhed, who by Word, or Writ, Deviſe, Utter, or publiſh any falſe, ſlanderous, or reproachful Speeches, or Writs againſt the State, People or Countrey of *England*, or to the Diſhonour of any Privy Councellour thereof: and therefore, we hope, that ſo wiſe and juſt a Nation as *England*, which puniſhes thoſe who injure a privat Peer, will not ſuffer them to go unpuniſhed, who rail at a Nation, that is obliged to hazard their Lives and Fortuns for their preſervation.

Unhappy Liberty which conſiſts in the priviledge of doing ill, and which ſerves for nothing, but to make the Authors be contemn'd for want of Breeding, and deſpis'd for want of Senſe: Nor does this Crime want a ſufficient puniſhment, ſince it has convinced us, that the Enemies of the Monarchy are ſuch liars, and ſo malicious, that they deſerve neither to be believed, nor followed; and how can any amongſt us believe theſe in Matters of Right? who every day lie ſo ſcandalouſly in Matters of Fact.

Upon

Upon this Ground, I confidently believe, that no honeſt man, will think we in *Scotland* have owned his *Royal Highneſs*, becauſe *England* had an averſion for him, as a late *P*amphlet has maliciouſly aſſerted; for as their worthy Peers did wiſely reject the Bill of Excluſion; ſo our Predeceſſours were obliged to this by ſo many Oaths, and through a Series of ſo many Ages, and GOD had ſo ſeverely puniſhed us in the laſt Age, for having joyned with our Rebellious Neighbours againſt our Native Prince, that we had been the greateſt Fools and Rogues upon Earth, to have Relaps'd ſo ſoon into the ſame Errors; and eſpecially in following the Example and Advice of thoſe very Rebels, or their impenitent Heirs, who had in ten years Exerciſed that Arbitrary Government over us, againſt which themſelves had Exclaimed, and to a hight, that we had never known, and as it is very well known, that every honeſt Man in *Scotland* rejoyces, when they hear of the proſperity of the *Royal Family* in *England*, and eſteem highly, and love paſſionatly all ſuch as have, or do contribute to it (an Union in Principles, being ſtronger then that of the Kingdoms) So *Scotland* being the leſs powerful Nation, what can they gain in the conteſt? Or why ſhould they envy that which is their greateſt Security, as well as Honour.

The delivering of the beſt of Kings at *Newcaſtle* was no more a National Act in us, than the Murdering him after a Mock-Tryal, was a National Act in the Kingdom of *England* Rebels in both committed thoſe Crymes, whilſt honeſt Men ſuffer'd, with him, and for him; and it is undenyable, that the honeſt Party of *Scotland*, were at that time fighting under the Great *Montroſe*, againſt that pretended *Parliament*, which Voted his Delivery, and that even our Rebellious Countrey-men delivered him only up

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to ſuch of our Neighbour Nation, as did Swear upon Oath, that they ſhould preſerve Him and His Crowns, and when they found that theſe Sectarians, neither regarded their Oath nor their King; they rais'd an Army immediatly, to Expiat their Cryme; Nor wanted ever our Nation an Army, even under the Uſurpers, to appear for the Monarchy, and from us, and Encourag'd by us, went that Army that Reſtor'd our preſent King: Let then no honeſt Man remember thoſe National Errors, except either in his Prayers, when he Interceeds with GOD, *For diverting the Curſe which thoſe Crimes deſerve*; Or in Judicatures, when ſuch are to be puniſh'd, as would lead us back into thoſe Confuſions. But why the Authors of theſe Pamphlets ſhould condemn the very Actions, which they ſo very faithfully Copy, ſeems very wonderful, as it does how our *Fanatick* Countrey-men, ſhould wiſh ſucceſs to thoſe who Rail at their Nation and their Principles.

Open then your Eyes, my dear Countrey-men, and let not your own *Fanaticiſm*, nor their Cheats perſwade you, that ſuch as endeavour to leſſen and aſperſe the Monarchy in our Neighbour-Nation, will be ever Faithful to you, who are ſworn, even in your *Covenant*, to maintain it in this, to you who oppoſed them in the laſt War, in their grand Deſigns for a Common-wealth, and the Extirpation of the *Scottiſh* Race, to you who think that Preſbytery *jure divino*, which they laugh at, and never uſe it as an uſeful Government in the Church, though they do ſome times as an uſeful Tool to Rebellion in the State, and to you whom they cheated ſo far, and oppreſt ſo dreadfully in the late Rebellion, that they know you cannot truſt them. Was it the Church of *England*, or *Sectarians* that Sold you to be Slaves in their Plantations, that fill'd your Pulpits with *Buff-Coats*, and your Churches with Horſes; and did not they

they turn all your own Arguments againſt you, that you had us'd againſt Epiſcopacy; for as you ſaid the Biſhops ſhould not have Revenues, ſo they ſaid your Miniſters ſhould not have Stipends, as you contended, that Lawn Sleeves were Popiſh; they contended, that Gowns were ſo too; they in Enimity to Ceremony, would cover their heads at Prayer, as you did in Churches; and by the ſame Rule that you taught that Subjects might Reform Kings, they concluded againſt you, that they might Execute them.

I ſhall likewiſe refer to your conſideration, that it is the Duty of every good Subject, to obey the Laws of that Nation wherein he lives, ſince they muſt either obey the Magiſtrate, or overturn him; and a *Schiſm* does breed ſo much Un-chriſtian Heat, and ſo many Civil Wars, that no pious or reaſonable Man ſhould Engage in it, except he be neceſſarly Obliged to ſeparate from the the Church, as abſolutely Anti-chriſtian: But ſo it is, that the Differences betwixt our Epiſcopacy and *Preſbytery*, which have occaſioned all theſe dangerous Diſorders, are founded upon no expreſs Text of Scripture, elſe Forraign Churches would not acknowledge ours to be a True Church, as they univerſally do; nor had the Fathers of the *Primitive* Church owned a Government, which ſtood in direct oppoſition to the Word of God. And it ſeems ſtrange, that God Almighty ſhould have deſigned to expreſs a thing in Scripture, as neceſſary for Salvation; and yet we who are obliged to obey the ſame, ſhould not be able to find it out. It is alſo very fit to be conſidered by you, that the Reaſon why Monarchy has always preferred Epiſcopacy to Preſbyterian Government, proceeds not only from an averſion to *Preſbytery*, as neither Eſtabliſht by Scripture, us'd in the Primitive Church, nor recommended by the Holy Fathers; but

but becauſe it has been obſerved, that your Government being founded on Equality amongſt Preſbyters, reſembles more a Common-wealth; and that you have always in this Iſle, Reformed without the Monarchs approbation, if not againſt it, and ſo have Interwoven with your Religion, Principles oppoſit to Monarchical Government, reſolving to ballance Eſtabliſht Authority, with pretences of Religion, from which neceſſity has at laſt forced many of you to oppoſe all Government. And it is ſtill obſervable, that whatever oppoſes the Government of the Countrey where we live, muſt at laſt end in Anarchy and Confuſion.

Thoſe great Idolizers of Parliaments, in ſpeaking ſo much againſt our laſt, ſhew that they care no more for Parliaments, then they do for Kings, and think them only Infallible when they are ſuch as themſelves. For where was there ever a Parliament ſo unanimous as ourswas in the matter of the Succeſſion, not one Man having proponed any one Argument againſt it. And what a Villanous thing is it to aſſert, that the *Teſt* is a Popiſh Contrivance, when in it we Swear expreſly to own the *Proteſtant Religion*, and breed up our Children in it. And that without all mental Reſervations, or Equivocations. And to ſhew how well contriv'd that Oath is, in oppoſition to *Popery*: Not one *Papiſt* in all our Kingdom has taken the *Teſt*. What more could his Majeſties Commiſſioner have done, to ſhow his willingneſs to have honeſt and loyal *Proteſtants* enjoy their own *Religion*. And who after this ſhould believe theſe lying Authors? Who would Impoſe upon the World, that, as a mark of *Popery*, which is the ſtrongeſt Bulwark imaginable againſt it. And though we make not the *Proteſtant Religion*, the Inſtrument of Cruelty, the Stirrup of Preferment, a Cloak for all manner Knavery, and a Trumpet of Rebellion: nor admire avowed Atheiſts, nor pay Salaries to ſuch as deny

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the Divinity of Jesus Christ, if they be usefull to other Hypocritical designes, as some do; yet our Nation has reason to suspect such as will have them passe for Popishly inclined, (as if all Duty, when it pleases not them were Popery,) for in our Chief City, and it's Suburbs, we have not 14 Popish Families; in the whole Dioceſs of S. *Andrews*, the far largeſt of *Scotland*, we have not three, and there are not 60. upon a sworn Report, to be found in the Dioceſs of *Aberdeen*, which is the moſt suspected of all others.

These wise States-men, who think insolently, that they though privat men may reform our Laws, as well as their own Religion; we appeal still to that Parliamentary Infallibility, which they here deny: And therefore we justly contemn these Pamphlets, which inveigh against the 25 Act of the third Session of His Majesties first Parliament, whereby the Estates of this Kingdom oblidge themselves, to send 22000 Men, into any part of His Majesties Dominions, wherever His Authority, Honour, or Greatnes may be concerned, which was certainly their duty; for if they defend it only at home, their defense may prove useles, both to themselves and Him, and since he is our King every where, we should assist Him every where: And that the King may call his Subjects, even without his own Territory, is clear by all Lawyers, and amongst whom; I shall only cite, Castallio *de Imperatore queſt.* 159. Where the question is expresly treated, and this decided from the Law of Nations: Nor need any honest Subject fear our assisting their King, and Traitors should be terrified. But in all this, we were much Loyaler then that Peer of *England*, who, when our Rebellion rose, in 1679. affirmed, that His Majesty could not send down Forces into *Scotland*, without consent of Parliament; becauſe, by the Treaty of *Rippon*, it was declar'd, that the Subjects of one Kingdom, should not in

vade the other, without the consent of the Parliaments of both Kingdoms, which Treaty is Rescinded with us, and we believe *England* will not think that a mutual Treaty can stand, when one side is free: nor consider we Parliaments, as the Arbiters of Peace and War, that being the Kings incommunicable Prerogative, but this shews why our Acts are rail'd at, and what Loyal Men they are who do it.

As also, since all lawfull Parliaments have ever since the Reformation, both Here, and in *England*, made very severe Laws against *non Communicants*, or *Schismaticks*; either no respect is to be had to those Parliaments, or these Laws are Just, and fit: and why the Laws should have been so severe to them in Queen *Elizabeths* Reign, before they had rebelled, and should now remit their severity, when by frequent rebellions, and extravagant Sermons, Books, and Assemblies, they have incorporated so many dreadful principles, inconsistant with all Government, into the bodie of their Divinity: I see not, and shall be glad to be informed, and if it be pretended, that their numbers having infinitly increased since that time, should prevail with a wise Magistrat to lessen his severity, we conclude just the contrary, especially, since we find, that an exact and firm, though moderat execution of the Law, is abler to lessen their fury, then an indulgence, there being now very few, who go not to Church, and almost all repenting, that they went not sooner, and I desire to know from these Authors, if their Partie in *England* thinks: that the true way of using Papists or if the Presbyterians allowed that way of arguing, when they prevail'd, and was it not that lenity, which drew on the last Rebellion, and our Slavery.

A short view of our Laws, made on that Subject, with the occasion of them, will best clear this point.

In

In the laſt Rebellion, defenſive Armes, and that the people had power to Depoſe, or Suſpend Kings, were the great foundation, and in defence whereof, ſeveral Books have been lately written, and therefore theſe were declared Treaſon, and it is admir'd, how any can be called good Subjects, who maintain them.

The Parliament did ſee, that the not going to Church, occaſioned much Atheiſm and Ignorance: and that the hearing ſuch as were not Authorized, was a certain inlet to all Sedition and Heriſie: ſince every man might preach what he pleaſed, and therefore they diſcharg'd Houſe Conventicles, and declar'd, that meetings in the Fields were formall Rebellion; ſince Rebellion is only a riſing in Armes, without, and contrary to the Command of Authority, and that ſometimes there would be gathered together ſeveral thouſands of people in Armes, who might joyn when they pleaſed; and from a Conjunction, meerly of thoſe, proceeded the Rebellions 1666. and 1679. and they puniſhed theſe with moderat Fynes, far below the guilt. And how dare men be ſo diſingenuous, as to own themſelves the only Proteſtants, and yet to inveigh againſt Statutes made to hinder *Jeſuites*, *Socinians*, and others to pervert the people; as we certainly know, they did for many years together, at thoſe meetings, and how could this be prevented, ſince the poor commons know not what is Orthodox. And ſince they were perſwaded not to ask who was to Preach, leaſt they ſhould be oblidged to Witneſſe againſt him, and as the dangers on the one hand were great, ſo on the other, they were deſired to go to that Church, which the greateſt and ſobereſt of their own Miniſters did, and do ſtill frequent.

Some Miniſters fearing, that their hearers might be led as Witneſſes againſt them, infuſed in them, a dangerous and ridiculous principle, that no man was oblidged to depone,

when he was called to be a Witneſs, and that no man was oblig'd to Depone, when the being at ſuch illegal Meetings, was referred to his Oath: and this was called the accuſing of ones ſelf; whereas all Laws under Heaven, oblige a man to be a Witneſs, elſe no Crime could be prov'd. And if this were allowed, we might have as many Maſſes as we pleas'd; and when any thing is referred to a mans Oath, he does not accuſe himſelf, for the Fiskal accuſes him; and do not all Nations prove Injuries and Miſdemeanours by the Oaths of the Committers, if theſe are not to be capitally puniſhed. And therefore the *Parliament* was forced to make a *Statute*, obliging them to Depone as Witneſſes.

I need not tell the dreadful Equivocations lately invented to ſecure Rebels, as when a Witneſs Depones he ſaw a Hilt, and a Scabbart, but yet knows not if there was a Sword. The *Pia fraus* of *Ignoramus Juries*, and a hundreth other Cheats, rather to be lamented, then related. And which tended to unhing all Property, as well as Religion, if God and zealous Magiſtrates had not prevented it. And yet the oppoſing theſe, which is a Duty, muſt be repreſented as a Crime, for deluding ignorant people.

The Parliament then having for the neceſſary Defenſe of the Kingdom, by reiterated Laws, commanded thoſe things to be put to Execution. Laws which did not only at firſt ſeem to be juſt, but were thereafter upon experience, found to be ſo. Are not they promoters of *Arbitrary Government*, who think, that the Judges and Magiſtrats of the Nation, ſhould diſpenſe with ſuch Laws? And whoever thinks he may diſpenſe with the Law, muſt certainly think, that he is ty'd by no Law; and that is to be truly *Arbitrary*. And it is moſt obſervable, that theſe who are Enemies to *His Majeſties Government*, and *His Servants*: are of all men

men alive, most guilty of that *Arbitrarineſs*, which they would fix upon others. It cannot be imagin'd, that the King will contemn the Laws, since they are his own Creatures, as well as His Support, whereas such as oppose Him, or Rebell against Him, must first trample under foot, the Laws by which the King is Secur'd, and by which they are to be punish't, and it is not the Masters, but Robbers who break the Fences.

2*ly*, Are not these honest and good Countrey-men, who think it cruelty to punish such as did take up Arms twice in an open Rebellion? and who own all the Cruelties that were committed in the late Civil Wars, who burn publickly *the Acts of Parliament*, and who joyn with Murderers.

3*ly*. Albeit those Crymes be very attrocious, horrid in themselves, and dreadful in the preparative, inconsistent with humane Society, and a Scandal to *Religion*. Yet have not *His Majesties Judicatures* offered Remissions to all such as have been accus'd, providing they would disown those *Rebellious* Principles; so that such as dy, are the Martyrs of their own Crymes, and justifie their Judges, even whilst they are Exclaiming against them. And as no *Government* under Heaven, did ever shew so many Instances of Clemency, offering Indemnities when there was no necessity for them, Renewing and Pressing those Indemnities, when they were twice or thrice slighted; and *Remissions*, when all those gentle Offers were contemn'd: so, has any man dy'd amongst us, by malicious Juries, or false Witnesses.

4*ly*, Has not the Privy Council in their Fyning such as were guilty, proceeded with such moderation, that albeit for many years, the Laws were absolutely contemned, after many Reiterations by the Parliament, and Proclamations from

from the Council, pressing Obedience to them: Yet they have Ordered Execution to be Suspended, as for bypast times, to all such as would Obey for the Future. And I must beg leave to Observe, that it has been upon an exact Review, found, that *the Rebellious Parliament*, 1647. did Impose more by way of Fyne in one day, than the Privy Council has done since *His Majesties happy Restauration:* Such as differ'd from their *Government*, Intreated for those Pardons, which are now refus'd. And it would have been then thought very ridiculous, to offer a man his Life; who had been in Arms for the King, upon his offering to live peaceably.

5*ly*, If the *D*ifferences amongst us, upon which all those Rebellions were founded, were Matterial and did proceed from Conscience; somewhat might be said to lessen, though not to justifie the Guilt, for Conscience should neither be a Cryme, nor a defence for Crymes. Yet what can now be said? When all men willingly go to Church, which certainly they would not do, if their Conscience did not allow them. And it being now clear, that the former contempt of the Law, proceeded from Humor, and not from Conscience: who can blame Magistrats for preferring the Law of the Kingdom, to the *Humor of particular Persons.* Somewhat might be likewise said for those *D*ifferences, if we did not find, that they necessarly, and naturally produced Principles of Rebellion, Assassination, contempt of Magistracy, and of *M*asters, with a thousand other Impieties, and Immoralities: Whilst it is very remarkable, that *Episcopacy* never bred a Rebel, nor inspir'd a Murderer; but gentle, like *the Christian Religion* which it professes, it *Preaches Obedience under the pain of eternal Damnation*, and *practises mercy to that height*, that it is now become *the Temper of the Men, as well as the Doctrine of the Church.*

6*ly*, In

6ly, In Matters of *Government*, We muſt Ballance the Safety of the whole, with the Puniſhment of a few. And in our Caſe, We muſt conſider that a Civil War would be much more ſevere, then a few Executions, or Fynes can be. And we need only remember the vaſt Subſidies, the extraordinary Cruelties, and boundleſs Arbitrarineſs of the laſt Age to be convinc'd, that it is not *Severity*; but kindneſs in the preſent *Government*, which forces them, as a Phyſician, rather to draw a little Bloud, than to ſuffer their Patient to run into a Frenſie; eſpecially when they know the Patient has been lately inclin'd to it: and when they ſee the uſual Symptoms that foretel the approaching fit, to grow very remarkably every hour.

This may be further clear'd, by comparing a little the condition, wherein *His Royal Highneſs* found this Kingdom; with that State to which it is now brought, under his happy Influence.

It cannot be deny'd, but that before *His Royal Highneſs* came to *Scotland*, the Fields were every Sabbath cover'd with Arm'd-men, upon the pretext of hearing Sermons: Which Sermons were ſo far from being a legal Defenſe againſt Rebellion, that they were moſt Efficacious Incentives to it. *His Majeſties* moſt undenyable *Prerogatives*, were upon all Occaſions contraverted. Maſters were contemn'd by their Servants, and Heretors by their Tennents. And it was very juſt, and conſequential, that theſe Maſters ſhould have been contemn'd by their Servants, who did themſelves learn them this Leſſon, by contemning the King their Superiour, and Maſter.

The Miniſters of the Goſpel were Invaded, Wounded, and Aſſaſſinated. Churches were either left Waſte, or inſolently Perturb'd, when they were frequented. Principles of Aſſaſſination were Preach'd and Practis'd. All ſuch as

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own'd, or Serv'd *the Government* were affronted, and menac'd. *Paſquils* and *Defamatory Libels*, vvere publickly vented and prais'd. Dreams, Viſions and Propheſies, portending the Ruine and Overthrovv of the *Government* vvere ſpread abroad to amuſe the People, and fill the Heads of the vveaker ſort vvith Fears and Jealouſies. Lying vvas become all our Wit, and Hectoring of the *Government* all our Courage:

Whereas novv, People are gathered in from the Fields to Churches. *God Almighty is ſerved with Reverence; and the King as his Vicegerent with Reſpect. The Royal Prerogative is neither ſtreatch'd, nor baſt'd.* The Privy Council have learn'd by *his Royal Highneſſes* ſitting ſo long amongſt them, to ſhevv as much Clemency, as may conſiſt vvith firmneſs: and to ſuſtain their Juſtice by their Courage. All Animoſities and Differences among our Nobility are Compos'd and forgot: and Thefts and Robberies in the *Highlands*, vvhich vvere formerly ſo great a Reproach to the *Government*, and a Ruine to the *People*; are novv not only Secur'd againſt, by preſent Puniſhments, but prevented by ſuitable and proportional Remedies, ſuch as Commiſſions of Juſticiary, Security taken from the Heretors and Chiftains of Clans; ſetling of Gariſons in convenient places, and giving Money for Intelligence to Spy's. Miniſters are ſo much Protected and Encourag'd, that one can hardly think, if he had not knovvn their former condition, that ever the People had had any unkindneſs for them: Men do not novv luſt after Nevvs, nor Conventicles: But Employ thoſe Thoughts, and that Time upon their privat Affairs, vvhich they formerly miſpent, in followving Expenſive Field-Preachers: Securing themſelves and their Eſtates, by a pleaſant peaceableneſs, from the *Fears*, as vvell as the *Damnage*, of *Fines* and *Puniſhments*. We have no *Paſquils*, nor hear of no *Viſions*. Men honour the Lavvs by vvhich they are pro-

Protected, and those Magistrats, by whose Ministry they enjoy this Peace and Quiet: Whilst their Magistrats on the other hand, remember that *His Majesty* and *His Royal Highness*, hate the insolence of their Servants, though they may for some time suffer it: And that the preparatives they make to the prejudice of the People, *will be lasting Snares and Burdens on their Posterity.* Magistrats should pity the frailties to which themselves are subject, and the misfortuns which themselves cannot shun, and should cover rather than punish Escapes, which have more of mistake in them than of Guilt.

By which paralel, our Countrey-men and Neighbours, may judge, whether *His Royal Highness* be so undesirable a Governour, that the Law of God, of Nature, and Nations should be brok, to Exclude him from his Right of Succession. Whether we Enjoy greater, and truer Liberty, under his Protection: than we did under our usurping Parliaments. And whether those Expressions of our Thankfulness, proceed from flattery, or from gratitude.

REFLECTIONS
ON
The Earl of *ARGIL's* Proceſs.

NExt to our Laws, our Judges are arraigned, and though all Nations preſume, that Judges underſtand, and that we ſhould preſume them Juſt, being ordinarly men of Integrity, who are ingadg'd upon Oath, and have both Soul and Reputation at Stake; And who know their Children are to be Judg'd by the preparatives they make. Yet our Phamphleters, who neither underſtand matter of *Law*, nor matter of Fact, ſtick not moſt ſoveraignly to decyde, that our *Sentences*, even in Criminals (in which men cannot Err wilfully, without murdering deliberatly) are abſurd, ridiculous and inhumane. And yet theſe ſame men (*the great Patrons of Juſtice*) are the Secretaries of that Party, who after they had murdered *Strafford*, made an *Act* that none ſhould dy by that preparative; in imitation of which horrid Injuſtice, our Rebellous Zealots did Execute Sir *John Gordon* of *Haddo*, upon a *Statute* made by them, after they had Condemn'd him as a Traitor, for bearing Arms againſt the three Eſtates, tho he had a ſpecial Commiſſion from the King their Soveraign. And hang'd the great Marques of *Montroſe*, with his Declaration, Emited by His *Majeſties* Authority about his Neck, though they

they had Treated and concluded with the King that gave it, by whom ſo many Noble-men and Gentle-men fell for doing their Duty: and ſo many innocent *Cavaleers* were Maſſacr'd after they got Quarters.

Then it was, That an Oath was taken by our *States-men*, not to ſpare the lives of either kin, Friend nor Ally. That three hundred were expos'd on a Rock to be ſtarv'd, and as many murdered in cold Bloud after Quarter. And a Scaffold being Erected at the Croſs of *Edinburgh*, on which in ſix Weeks time, multitudes of generous *Gentlemen* having dy'd, a Zealous Miniſter *Thanked GOD for that Altar, on which ſo ſweet ſmelling a Sacrifice was offer'd.* Whereas our Merciful King, having had his Father Martyr'd, and being himſelf Baniſh'd; Pardon'd even His Fathers Murderers. And granted not only Pardons, but Indulgences after two inexcuſable Rebellions. And it was very wonderful, to ſee *His Royal Brother* (this formidable Tyrant in our Pamphlets) pleading for Pardon even to ſuch as owned a hatred againſt all the *Royal Family*. Nor can it be deny'd, but there is a gentleneſs in the old *Cavaleer Party*, which demonſtrats that they are in the Right. And which is infinitly preferable to that ſoure Cruelty, and moroſe bitterneſs, which make the inſolent *Republicans*, and *bigot Fanaticks*, humourous and dangerous. And as a *Monarch* the true father of his Subjects, thinks it generous to Pardon, ſo *Republicans* muſt be Cruel, to ſhew a Zeal for the Rabble which they Serve. Nor do I ever hear that any of thoſe publick Spirited Authors, do turn the Edge of their Zeal againſt *Ignoramus juries*, falſe Witneſſes, lying Scriblers againſt the Government, aſſaſſinats, *&c.*

I am now come to take notice of a late *Pamphlet*, called *The Scots-miſt*, wherein, becauſe the late Earl of *Argyl's* Proceſs is founded upon Points *in jure*, and conſequently not ſo obvious to the conſideration of every Unlearn'd Man, the Author takes pains to make it appear an unanſwerable Inſtance of the Arbitrarineſs of our Judges.

But before I anſwer his weak Reflections in Law, I muſt take notice of ſome few Particulars in Fact:

As *firſt*, His Judges were not Judges in a *Packt Commiſſion*; but *the learn'd and Ordinary Judges of the Nation.*

2*ly*, What Temptation could the King, or any who Served Him have to ſtreatch Law in that caſe; for that, as to his Life there was no deſign, is clear from the expreſs Order *His Royal Highneſs* gave, not to keep him ſtrictly after he was found guilty. Though great preſumptions were offered to that generous Prince of a deſign'd Eſcape. And himſelf ordour'd in Council, that the moſt Learned Advocats in *Scotland*, ſhould be preſt to appear for him. Nor was ever a Priſoner us'd, either by Judges, or by the Kings Advocat, with ſo much diſcretion and reſpect.

3*ly*, His Jurisdictions, nor Eſtate could be no Temptation, for the late Advocat had Repreſented ſuch Reaſons againſt his Right to theſe Juriſdictions and Superiorities, as no man under Heaven could anſwer with any ſhadow of Reaſon: And the King got not one farthing of his Eſtate, for *His Royal Highneſs* by his generous Interpoſition, procur'd more of it for his Children, then belonged to the Family, Debts being payed. And the remainder was gifted by our gracious and inimitable King amongſt the Creditors. And the Tithes poſſeſt by that Earl, returned to the Church.

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Happy Kingdom, wherein the greateſt Inſtance of *Arbitrary Government*, is a Perſon, who having nothing to loſe, ſave what the King gave, had a fair Tryal by ſworn Judges and Jurors: and loſt upon the Event, neither Life nor Fortune. And whoſe Family after three capital Sentences, two by *Parliaments*, and one by a Solemn *Juſtice Court*, is left without envy in a better condition, then almoſt any who Serv'd the King in His great Extremities.

4*ly*, All theſe Narratives and Apologies are founded on great miſtakes, as if the Earl had been deſired to take the *Teſt*; for we deſire no man, but men in Office deſire it, becauſe they cannot enjoy their Offices till they take it: And that the Council was once pleaſed with the Explanation he gave, as if he had given in an Explanation: and the Council being pleaſed with it, allowed him to take it in theſe Terms: Whereas the true caſ was, that the Earl had aſſured both *His Royal Highneſs*, and many others, that he would not take the *Teſt*. Notwithſtanding whereof, coming in abruptly to the Council, he ſpoke ſomething with ſo ſlow a Voice, that none ſay they heard him, and then clapping down on his Knees, took the *Teſt*; but ſome Copies being diſperſed of what he ſaid, all Loyal Men murmured at the preparative, as tending to deſtroy, not only the Parliaments deſign in the *Teſt*, but to unhing all *Government*. And the greateſt *Fanaticks* in *Scotland*, owned they would take it in that Senſe; without prejudice to their Principles: and ſo they might, being allowed not to bind up themſelves from endeavouring any alteration they ſhould think fit for the advantage of *Church and State*: Which made the *Oath* no *Oath*, and the *Teſt* no *Teſt*. And therefore the next day, when he offered to take the *Teſt*, as a Commiſſioner of the *Theſaury*, he

he was desired first to give in his *Explanation*, which when he gave it in, it was enquir'd, if any man had heard that *Explanation* made in Council: and no man did remember he heard or understood it so. And thereafter it was Voted not satisfactory. And albeit His *Majesties* Advocat allowed the Earl to prove that the Council heard and approved it; yet his Lordship failed in the Probation: and it is absurd to think the Council would have allowed an *Explanation*, which would have Evacuated the whole *Act*, and the design of the Parliament in it: as shall fully hereafter be prov'd. Whereas if the Earl had only designed to Exoner his Conscience, he might either have abstained, for no man is obliged to take the *Test*; or if he had resolved to know if his meaning would have been acceptable, he might have given his Sense, and petitioned to know if that was acceptable, which had been a fair and sure way, both for Takers and Rulers. Whereas, first to take, and then give in his *Explanation*, is a certain way to secure ones own Employments, and a preparative to let in any, let their Principles be what they please, if they have the Wit to Salve their Principles by apposit Explications: and the dispersing Copies of that Paper, before it was presented in Council, cannot be said to have been done for Exonering his own Conscience, but is the ordinary way that men take, when they resolve to Defame the *Government*. Nor is our *Government* so unreasonable, as not to desire to satisfie such as scruple, without ill Designs. And this they shew in satisfying some of the *Orthodox Clergy*, who offered modestly some Scruples against the inconsistency of *the Confession of Faith*, with *Episcopacy*: And which Scruples being easily cleared, they all obeyed save nineteen or twenty, in the whole Kingdom at most, some whereof had also in-

inclinations however to the good old Cauſe. Nor can I paſs by here a ſtrange abuſe put upon the World in that Pamphlet, as if thoſe ſcruples there ſet down, were only the Scruples of the conform Clergy, whereas many Papers bearing that Title, were drawn by the Preſbyterians, and found amongſt their Papers; and the Paper aſcryb'd to them in that Book, wants the chief Objection they ſtuck at, *viz.* That the Compylers of that *Confeſſion of Faith* were Enemies to Epiſcopacy; and in place thereof, it aſperſes our preſent Epiſcopacy, the Kings Supremacy, and the Act of the Succeſſion, which the conform Clergy never did.

For clearing this Proceſs, modeſtly and meerly in defenſe of our Judges, I ſhal firſt ſet down the Earls Explanation, which runs thus,

I have conſidered the Teſt, and am very deſirous to give Obedience as far as I can---

I am confident the Parliament never intended to Impoſe contradictory Oaths, and therefore I think no body can Explain it but for himſelf, and Reconcile it, as it is Genuine, and agrees in his own Senſe.

I take it as far as it is Conſiſtent with it Self, and the Proteſtant Religion. And I do Declare, I mean not to bind up my ſelf in my Station, and in a lawful way to wiſh, and endeavour any Alteration, I think to the advantage of Church, and State. Not Repugnant to the Proteſtant Religion, and my Loyalty, and this I underſtand as a part of my Oath.

The firſt Cryme Charged upon the Earl from this Paper, is, that albeit by the 107. *Act* of *Parliament* 7. *J.* 1. It be Statute, *that no man Interpret the Kings Statutes, otherwiſe then the Statutes bears, and to the Intent and Effect they*

they were made for. And as the Maker underſtood, and whoſoever does the contrary, ſhall be puniſhed at the Kings will. Yet the King and Parliament having appointed an *Oath* to be taken for Securing the Proteſtant Religion, and the Kings Prerogatives. And having to evite the old Fanatick Juglings; and Evaſions of the Covenanters on the one hand; and the Equivocations and Mental Reſervations of the Papiſts on the other.

The Oath does expreſly bear, theſe Words: *And finally I affirm and ſwear, That this my ſolemn Oath is given in the plain and Genuine Senſe and meaning of the words, without any Equivocation, Mental Reſervation, or any manner of Evaſion whatſoever.* The ſaid Earl did, notwithſtanding of that Statute, and the foreſaid Clauſe in the Oath it ſelf, take the ſaid Oath in ſuch a Senſe, as did not only Evacuat his own taking of it, but did teach others how to ſwear to it, without being thereby obliged; and path a Way to Poſterity, for Evacuating all the Acts that ever can be made for Security of Religion, King and Government, in ſo far as he declares, that he did take the Oath with theſe Qualifications only.

Firſt, *I will give Obedience as far as I can.*

2ly. *I think no body can Explain it but for himſelf, and reconcile it as it is genuine, and agrees in his own Senſe.*

3ly, *I mean not to bind up my himſelf in my Station, from making any alteration, I think to the advantage of Church or State*, &c. Which is not to take it in the Impoſers Senſe, but his own, which will the more eaſily appear from theſe Reaſons.

Firſt, That the Deſign of all Laws, but eſpecially the making of Oaths, is that the Subjects ſhould be bound thereby, according to the Senſe of the Legiſlator. Which

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is very clear from the expreſs words of the former *Statute*, and by the Reaſon whereon it is founded, which is, that the Legiſlator may be ſure of Obedience, and may know what to expect from thoſe who are to obey. And who have taken the Oaths preſcrib'd. And in which, Divines agree with Lawyers, for they tell us, that *verba juramenti intelliguntur ſecundum mentem & intentionem ejus cui fit juramentum*, *Sander: pag:* 173. But this ſenſe in which the Earl takes the *Oath*, does Evacuat all the deſigns of the *Oath*: For, *firſt*, Whereas the *Oath* deſign'd that this *Act* of *Parliament* ſhould be ſimply obey'd, as a ſure Foundation for the Security of Church and State; the Earl promiſes only to obey it as far as he can, without telling in what he will obey.

2*ly*, Whereas the *Oath* is to be taken in the plain genuine Senſe of the Words; the Earl declares, that no body can Explain it but for himſelf. And reconcile it as it is genuine, and as it agrees in his own Senſe. Which implys, that it had no plain genuine Senſe, in which it could have been taken. 3*ly*, Whereas the Parliament deſign'd it as a Security for the *Proteſtant Religion*; he declares he takes it only in as far as it is conſiſtent with *the Proteſtant Religion*. Which implys, that in ſome things it is not conſiſtent with *the Proteſtant Religion*. 4*ly*, It cannot be pretended, that the Parliament deſign'd to make an *Act* that had contradictions in it; and yet the Earl ſays, he takes the *Oath* in ſo far as it is conſiſtent with it ſelf, which imports neceſſarly, that in ſome things it is not conſiſtent with it ſelf. 5*ly*, The deſign of this *Oath* was, to preclude all the Takers from reſerving a Liberty to riſe in Arms upon any pretext whatſoever: but by this Explication, the Earl reſerves to himſelf a power to

make any alterations that he ſhall think ; for the advantage of Church and State. By all which, I conclude, that the Earl has interpret this *Oath* otherwiſe than it bears, and to the Intent, and Effect it was made for. And otherwiſe than the Maker underſtood. And therefore this Explication does clearly fall under the foreſaid *Statute*.

2*ly*. If this were allowable, no Member of Parliament needs hereafter propoſe any doubts in Parliament, but let the Parliament make what *Oath* they pleaſe, the Taker will Reform, and alter it *as he pleaſes*. When he takes the *Oath*. And I deſire to know from any man of Senſe, if the Earl would have obtained from the Parliament at the paſſing of it, that every man ſhould have been allowed to take it as far as it was conſiſtent with it ſelf, and the *Proteſtant Religion*. Or if they would have ſuffered the other Qualifications in that Paper to have been adjected, as a part of the *Act*. Which does demonſtrat, that he did not only not take it in the Legiſlators Senſe, as the former *Statute* Commands. But that he did not at all take the *Oath* that they made, but made a new Oath of his own.

3*ly*, If a man ſhould oblige himſelf ſimply upon Oath, to make me a Right to ſuch Lands, could this Senſe be conſiſtent with it, *I'l make it as far as I can*. Or would the making ſuch a Right, with that quality, ſatisfie the Obligation. Or could he who receives the Obligation, be ſure of a good Right, if the Perſon Obliged were bound to no further than he could perform.

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4*ly*, All *Oaths* muſt be ſo taken, as that the Taker may be purſued for Perjury; but ſo it is, that when it is not known what the Taker is ty'd to, it cannot be known wherein he has fail'd. And conſequently in how far he is Perjur'd.

5*ly*. I would willingly know, if the *Covenanters* would have allow'd any to have taken the *Covenant* with a Qualification that he ſhould obſerve it as far as it was conſiſtent with his Loyalty. And do not generally the greateſt Enemies to the Kings Supremacy declare, that they are content to take the ſaid *Oath*, in as far as it is conſiſtent with the Word of God, and the Proteſtant Religion.

6*ly*, If this were allow'd, every man ſhould take the *Oath* in a particular Senſe, and upon his own Terms, nay and upon contrary Terms, according to mens contrary Intereſts. So that it would not be the Parliaments *Teſt*, but every mans own *Teſt*. And there ſhould be as many different *Oaths*, as there are different Takers.

7*ly*, Former *Statutes* having diſcharged the Leidges to Convocat, or Aſſemble, or to enter into Bonds and Leagues without the Kings conſent, the *Covenanters* did proteſt, that their taking the *Covenant* was not againſt theſe *Acts*; becauſe theſe *Acts* could not be mean'd againſt any Leagues, or Meetings holden for Preſervation of the King, Religion, and Laws. And yet the 4: *Act Par:* 1: *Ch:* 2: does poſitively declare, that all ſuch Gloſſes are falſe and diſloyal, and contrair to the true and genuine meaning of theſe *Acts*. And therefore this Gloſſe muſt be ſo too, becauſe this Gloſſe is the ve-

ry ſame, both in Words, and Deſign with thoſe Gloſſes.

But though this Poynt be very clear, and undenyable. Yet Mr. *Miſt* (for ſo I muſt call the Author for diſtinctions ſake) makes thoſe three anſwers:

Firſt, That if the Authority which is to adminiſter the *Oath*, do's accept the Takers Senſe, the Taker is only bound in the Senſe he gives, and no other. But ſo it is the Council accepted his Senſe. And if they had refuſed, the Earl had not taken the *Oath*, nor had his refuſal been a Cryme.

To which it is replyed, That *firſt*, If it be a Cryme to Interpret the Kings Laws otherwiſe than they bear, and to the Effect for which they were deſign'd: Then certainly it may be debated with very good Reaſon, that though the Council had conniv'd at the Earls misinterpreting the Law, neither their negligence, nor their miſtake could have prejudg'd the King; nor have been in place of a Remiſſion. For though the Council be a more eminent Judicature than others, yet they cannot pardon Crymes, when committed. And conſequently their allowance, cannot make that to be no Crime which is a Cryme. And we have a particular *Statute* in *Scotland*, *That the negligence of the Kings Officers ſhall not prejudge Him.* Nor is that *Statute* ſo Reaſonable in any Caſe as in this. For ſince this, and all other *Oaths* are oft times adminiſtred by very ignorant Perſons, we ſhould have them a thouſand times cheated, and impos'd upon, by the adjecting of ſuch Qualifications as theſe; if the adjecting of ſuch Qualifications as theſe were not puniſhable. Becauſe he who did Adminiſtrat the *Oath*, did once allow them. And I put the Caſe, that if a man who had

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many Friends in Council, ſhould have given in an Explication that was uncontravertedly Treaſonable, by ſaying that he was content to take the *Oath*, but that he deſign'd not by it to preclude himſelf from ryſing in Arms, when he thought fit, for the Defenſe of the *Proteſtant Religion*. Would it have been a ſufficient Defenſe, that the Council did not challenge it in the mean time. And therefore if this was a Cryme in it ſelf, the Councils allowing the Explication, did not at all in ſtrict Law take off the Cryme. But the Judges (reſolv'd to do him all poſſible favour) were more merciful then to ſtraiten the Earl upon this Point. For if the Earl had given in an Explication to the Council, and told that he ſubjected that Paper to their Conſideration, and that he would take the *Oath* upon theſe Termes, and no otherwiſe, the Judges would have Interpos'd for the Kings Favour, if he had been ſo enſnared by the Councils connivance, or miſtake. Nor would the King have purſued it. But the true matter of Fact is, that the ſaid Paper was not given in, till the next day after the Earl had ſworn the *Teſt*. And though the Judges allowed him to prove that he had adjected theſe Words at his firſt Swearing of the ſaid *Teſt*, and that they were allow'd, yet he fail'd in the Probation, and ſo the Judicature is no way to be blam'd.

The ſecond Defenſe is, that all that can be inferr'd from the above-cited Law is, that no man ſhould put a Senſe upon any Law that ſhould bind another, or be the publick Senſe of that Law to all the Subjects, which is moſt falſe, for the Words of the Law are general, *That no man ſhall Interpret the Kings Laws, but to the Intent and Effect for which they were made.* And conſequently this muſt be Extended to all Caſes, where the Law is abus'd, and the

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Legiſlator diſappointed by a misinterpretation. *Et ubi lex non diſtinguit, nec nos.* And there is as great Reaſon to Puniſh ſuch as take *Oaths* under ſuch wreſted Senſes, contrair to the Deſign of the Legiſlator, as there is for puniſhing any Cryme. And much more then for puniſhing ſuch as miſinterpret the Law to others in other Caſes. Since if this be allow'd every man may by miſinterpreting the *Oath* as to himſelf, evacuat all *Oaths*, and make them ridiculous: And ſo not only enjoy Employments contrair to the Legiſlators Deſign. But likewiſe cut down the greateſt Fence of Government, ſuch as *Oaths* are now eſteemed to be by all Chriſtians.

The third anſwer made to this Point is, that the Legiſlator is ſureſt of thoſe who give Explications of their *Oaths*; for they deal honeſtly: And it is impoſſible that any man can take an *Oath*, but he muſt take it in his own Senſe. But neither is this of any moment; for if this Anſwer prove any thing, it will prove that no man can be challenged for adjecting any Quality. And conſequently the *Act* of *Parliament* could take effect in no caſe. And ſo not only were this Act uſeleſs, but we would want an excellent Remedy for curbing ſuch as reſolve to abuſe the Government, in rendring all *Oaths* that are invented for its Security, altogether ineffectual. And it is ſtrange to ſee what abſurd things men will run to, when they are put to Defend an Abſurdity. And though every man muſt have a *Senſe* when he takes an *Oath*, it does not therefore at all follow, that men muſt be allowed to adject Senſes that are inconſiſtent with the *Oath*, or render the *Oath* uſeleſs. And ſince this is not an *Oath*, that all the Subjects muſt take, it having no other Penalty adjected to the not taking, but the loſs of the Employment, they

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poſſeſs by the Kings meer Favour. Every good Chriſtian ought either to be ſatisfied of the deſign of the Legiſlator, in the *Oath*, or elſe to abſtain from it. And though the Mind of the Legiſlator might ſecure the Taker, yet that can only be when the Senſe is previouſly offered to, and accepted by him, which cannot at all be ſaid in this Caſe. And whatever favour may be pretended, where the Taker of the *Oath* condeſcends upon what he will oblige himſelf to; yet that cannot be pretended in this Caſe, where the Earl does not condeſcend how far he can obey. And does not ſpecifie how far he thinks it conſiſtent with *the Proteſtant Religion, or with it Self.* But only that he will obey *it as far as he can*; *and as far as it is conſiſtent with it ſelf and the Proteſtant Religion.* So that the Legiſlator is ſtill unſecure, and the Earl himſelf ſtill the only Judge. And I am deſirous to know in what part of *Europe* ſuch qualities were ever allowed.

It is alſo very abſurd to contend, that the adjecting of theſe qualities can put the Taker in no worſe caſe, then if he had refuſed the *Teſt*. And ſince that cannot amount to a Crime, ſo neither can this. For it is contended, that theſe qualities do infer a miſinterpreting of the Kings Laws, and a Defaming of the Parliament. And it is moſt abſurd to think, that ſuch things as theſe ſhould be ſuffered, becauſe they are thrown in into Explications: For elſe under the pretence of Explaining *Oaths*, we ſhould have virulent Libels dayly againſt King and Palliament. Nor can I ſee why Equivocations and Mental Reſervations ſhould be condemned if this be allowed, for ſuch as take the *Teſt* or any other *Oath*, may at the taking of them, Evacuat the Obligation of the *Oath*, by adjecting ſuch qualities. And it is all one to the Legiſlator, whether

ther he be openly or ſecretly abus'd. Only this I muſt obſerve, that the open Abuſe is the greater, becauſe it adds publick Contempt to the deſign'd Cheat: And whereas it is pretended, that the Magiſtrat may chooſe whether he will admit of the quality or not, which he cannot do in mental Equivacations.

To this it is anſwered, that that could only hold if the qualities adjected to the *Oath*, were firſt offered by way of Petition to the Magiſtrat, that it might be known whether he would allow of them, which was not done in this Caſe, wherein without ever applying to the King or Council: The Earl did by his own Authority Swear in his own Terms.

Though the Council and the Reverend Biſhops took pains to ſatisfie ſome ſcrupulous Miniſters (whoſe Scruples were in Favours of the Government) and got them the Kings Senſe, and told them their own. And which indeed was the genuine Senſe of the Parliament. Yet that did not at all allow the Earl, or any privat man to take it, in a Senſe Inconſiſtent with the *Oath*. And that too without previouſly offering his doubt to the King and Council: And geting their Approbation as ſaid is. Nor were they allowed to take it in ſuch general Terms, as did unſecure the Legiſlator, and admit the Takers to be Judges.

The ſecond Cryme fixt'd upon the Earl from this Paper, is, That albeit by the 10: *Act Par:* 10: *Ja:* 6: *It is Satute, That none of His Majeſties Subjects, preſume nor take upon hand, publickly to Declaim, or privatly to Speak, or Write any purpoſe of Reproach, or Slander of His Majeſties Perſon, Eſtate, or Government; or to Deprave His Laws, and Acts of Parliament; or miſconſtruct His*

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Proceedings, whereby any miſliking may be mov'd betwixt his Highneſs and his Nobility, and loving Subjects, in time coming, under the pain of death. Certifying them that do in the contrair, they ſhall be repute as ſeditious and wicked Inſtruments, enemies to his Highneſs, and the common well of the Realm; and the pain of death ſhall be Execute againſt them with all rigour, in example of others. Yet true it is, that the ſaid Earl did endeavour all that in him lay, to Defame the King, and Parliament, and Teſt, in ſo far as he did declare, *That he would give Obedience to it as far as he could*; Which imported that the Parliament had made an Oath which could not be abſolutely obeyed. And though the Parliament never intended to impoſe contradictory Oaths, yet no body can Explain it but for himſelf. Which did clearly import, that though the Parliament deſign'd not to make an Oath that was contradictory: yet they had made one that was indeed contradictory. And could not be made Senſe without privat Reconciliations, and Explications. And by ſaying that he took this Oath only *as far as it was conſiſtent with it ſelf and the Proteſtant Religion*; he did clearly declare to all the world that he thought it in ſome things inconſiſtent with it ſelf, and the Proteſtant Religion. And ſince there is nothing concerns Governours more than to have themſelves eſteemed by the people, without which, or numerous Armies, Government cannot ſubſiſt. And therefore our Parliaments, have in place of Armies, conſented in the former excellent Statute, that whoſoever ſhall endeavour to deprave the Laws, or miſconſtruct the proceedings of King and Parliament, ſhall be puniſhed to the death. And what can be a greater reflection upon King and Parliament, in the age wherein we live, than to have

made Laws which cannot be obeyed, and which are inconsistent with the Protestant Religion. And there was no man that ever hear'd that Paper, except this Author, but did conclude, that upon the matter, the people would from it entertain those scruples. Nor are these the inferences of people that live far from the Sun, as the undiscreet Author does object against this Nation. But men must be as disingenuous, as he, not to confess that these are most just and natural Inferences. And the Inferences are so much the stronger, that both this Author, and all such as were enemies to the *Test*, did take pains to make the People believe, that the Contrivers of the *Test*, were in so far, friends to Popery, and consequently, there was nothing drawn from this Paper by Inferences, but that which was too publickly owned by all, who were in the same Circumstances with him who gave it in.

Mr. *Mist* in answer to this part of the Accusation, does first cry out, that Crymes must not be inferred by Inferences, and Insinuations, seing these may be unjustly drawn against the design of the Party accus'd. And no man could be secure, if men could be made Criminal upon Insinuations, and Inferences. And this Paper having been given only for the Exoneration of his Conscience, it is not capable of any such Misconstruction, nor ought any such Construction be made, except where a malitious Design can be proved, in the Person accused.

To which it is answered, That the Parliament having been very jealous of the honour of the Government, which ought to be Sacred. They discharg'd in general, all such Words, and Papers, whereby any mislyking might be mov'd betwixt the King and his Subjects. And therefore

fore ſince the effect was the thing they lookt to, and that it is all one to the Government, what the Authors deſign was, if the effect was wrought, and the diſlike moved. They therefore ordained the effect to be puniſhed, without adding, as they do in other caſes, *that whoſoever ſhall malitiouſly, or upon deſign, Write, or Speak*, and it is very well known, that there are no Papers ſo dangerous, nor no Satyre ſo bitter as theſe, which are coloured with ſpecious pretexts of Conſcience, Reſpect and Kindneſs. And upon this accompt it was, that by the 9: *Act Par:* 20: *Ja:* 6: *All Papers that tend to renew the remembrance of the former feeds betwixt the two Nations, ſhall be puniſhable.* And what can be more juſtly called Inſinuations, and Inferences, *then Tendencies are.* And if the people be abus'd, and inflam'd, what advantage is it to the Government, that the Author deſign'd it not. And therefore it is much ſafer for the Government, as it is ſufficiently ſafe for every Subject, that men rather ſecure their own innocence, by not medling in publick Matters of State, then that they ſhould be encouraged to meddle, upon hopes, that they could not be reacht: ſince their deſign could not be prov'd. And which deſign and malice being latent Acts of the mind, can never be otherwiſe prov'd, than by the nature of the Action it ſelf. And therefore, the *dolus malus*, or deſign, needs not in this caſe be otherwiſe prov'd, than from the Nature, and whole ſtrain of the Paper it ſelf. Which was ſo fit to Inflame the people, and abuſe the Parliament; that *dole* and premeditat malice, could not have done more prejudice. But if it were neceſſary to clear the Earls Deſign, further then from the Paper it ſelf. Theſe Circumſtances might be conjoyn'd with what reſults from the Paper.

First, That the Earls Father and Family, had owned eminently the Principles againſt which this Oath was taken, *viz.* The Riſing in Armes, for Reforming without the Kings Authority, and did ſtill own the Covenant.

Secondly, The Earl himſelf had taken the Covenant.

Thirdly, The, Earl had all along oppoſed the *Teſt* in Parliament.

Fourthly, The Earl had poſitively told his *Royal Highneſs*, he would not take the *Teſt*.

Fifthly, Neither the Miniſters, nor any other within his Countrey, upon whom he could have Influence, had taken the *Teſt*.

Sixthly, I am affraid that the kindneſs ſhew'd to the Earl by the Fanaticks during his Tryal, and the noiſe they have made for him ſince that time: may clear too convincingly, that he deſign'd in that Paper to own that Intereſt, for they never manifeſt any concern, ſave for thoſe of their own perſwaſion. And where have we ever heard them reſent the injuſtice done to any Cavaleer, or ſhew more reſentment than in this Earls Caſe? So that this Author do's himſelf prove that deſign, which he deſiderats, and add to the guilt, which he deſigns to leſſen.

All which Demonſtrat, that he had an averſion for the *Teſt*, and ſo what he did againſt it, was done *dolo malo*; and whoever writes for him, writes againſt the *Teſt*.

2*ly*, What juſter meaſures could this Judicature take, then by conſidering what the Supream Judicature of the Nation, formerly did upon the like occaſion. But ſo it is that the Lord *Balmerino* being accuſed for having misinterpreted the Kings actions, in a Petition given in to himſelf;

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in which, againſt this Statute, he endeavoured to raiſe jealouſies in the Peoples mind, of deſigns to bring in Popery, and that by far remoter Inferences than theſe now inſiſted on. He was found guilty, though his Lawyers Pleaded for many dayes together, that there could be no Cryme, but where there was a Deſign. And there could be no deſign of Defaming the King, in a Paper that was meerly a humble Petition preſented to himſelf, and accepted, and Read once by him, without any ſhow of diſpleaſure; and wherein nothing could be challenged, but by way of Inference, and Implication. As alſo, this ſame Earl of *Argyle* being accuſed before the Parliament, in *anno* 1662: for *Leaſing making, betwixt King and People*, upon the *Acts* mentioned in the Earls Inditement. He was found guilty upon that Expreſſion, *viz. That that ſtorm would blow over, and then the King would ſee their Tricks.* Which Words, he pretended did relate to privat Perſons formerly mentioned in the Letter, and not to the Parliament. And that every man ſhould be allowed to Interpret his own Words. Which Interpretations being refus'd then, ought much leſs to be allow'd now, *nam ſemel malus ſemper præſumitur malus, in eodem genere militiæ.*

In the next place, Mr. *Miſt* endeavours to juſtifie the partſcular Expreſſions, againſt the Conſequences drawn from them, by the Lybel: And as to the firſt, He tells us, that in that Expreſſion, *I will give Obedience as far as I can.* He did not at all imply, that the Law was unjuſt, but only that he could *not give Obedience to it:* which cannot be Treaſon, ſince the refuſing it abſolutely would not be Treaſon.

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To which it is anſwered, that the Authors miſtake is very groſſe, for it was never deſign'd that Treaſon ſhould be inferred from theſe Words: but that which was inferred from it was, that it was a groſs Evacuating of an Oath, and a making it ineffectual, to ſay that a man ſhould ſwear by way of quality, that he *will obey as far as he can*, and that he declares, *this is a part of his Oath.* For there is no man, but will take any Oath with that quality: and whatever he takes with that quality, is no Oath, nor Obligation at all, that can bind him in the Legiſlators Senſe: and though we look upon it as no fault, nor Cryme, not to Take the *Teſt*; yet to Take the *Teſt* ſo, as not to remain bound by it; and ſo as to Teach others how to Evacuat it, and ſo as to deſame it, as this Expreſſion do's, is certainly an abuſing, Evacuating, and Swearing to an Oath in expreſs contradiction to the *Act of Parliament*, and to the Oath it ſelf.

And though it be no Reproach, not to Take the Oath at all, for then a man expreſſes no Opinion concerning it; yet certainly, that with the ſubſequent Expreſſions being Diſperſed among the People, could not but raiſe in them Jealouſies, and a Contempt of the Government. For having made Oaths which men could not Take, though they were deſirous; and for which afterwards he Inſinuats this Reaſon, *viz. That though the Parliament deſigned not to make contradictory Oaths*, yet he thinks, *That no man can Take that Oath, but in his own Senſe.*

And whereas Mr. *Miſt* pretends, that theſe Words are no Reflection upon the Parliament, ſince he do's not formally ſay, *that the Parliament has made an Oath that has*

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contradictions in it; but on the contrair, *That the Parliament did not Designe to make Contradictory Oaths.*

To this it is answered, That the Words are a very plain Reflection upon the Parliament; for no man can hear one refuse to take an Oath simply, because, though the Legislator Designed not to Impose contradictory Oaths; yet *de facto*, the Oath is such, as that no *man can Take it but in his own Sense*, and without a particular *Reconciliation of his own.* But the Hearer will certainly conclude, that the Parliament has been so Weak, Malicious, or Inadvertent, as to have contrived an Oath, *which has in it self Contradictions.* For else to what purpose was it said, *That he believed the Parliament designed not to Impose Contradictory Oaths.* And it is an extraordinary affront to a Parliament, *to have made contradictory Oaths*, though they did not design it; and to have made made such an Oath especially; *That no man could Take it but in his own Sense:* Whereby the whole Security of the Government is Evacuted. For the Security of the Government, as well as the Nature of Oaths, requires that an Oath should be Taken in the Legislators Sense. And can there be a greater moving of the People to Sedition, than to tell them that no man that Takes that Oath is bound by it farther, then he pleases, and further then his own Sense leads him. And that the Legislator is Ridiculous in having made Contradictory Oaths, which without Debating whether it be true or false, is a Reflection upon the State; and is unlawful for any privat Subject. And if any such thing were suffered upon pretence that it were possible, or true. It should be lawful for every privat man to accuse the Government.

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As to these Words, *I Take it in so far as it is Consistent with it Self, and the Protestant Religion.* Do's so far openly import; That in some things *it is Inconsistent with it Self, and the Protestant Religion*; that whosoever would perswade us to the contrary, must think us Fools and Idiots. And I almost charge my Self with Folly, for taking pains to clear this. Since, why should the Earl have Scrupled, *to Take this Oath simply*, and have thought it necessary to adject, that, *He Took it only in so far as it was Consistent with it Self, and the Protestant Religion.* If he had not thought it Inconsistent: and either he must say, he thought it Consistent, or not. If he thought *it Consistent*, why did he not Take it simply: and if he thought it *not Consistent*, then he owns that *He thought the Parliament made an Oath which was Inconsistent with it Self, and the Protestant Religion.* And this was to Inflame the People, who are so reasonably jealous of any thing that *is Inconsistent with the Protestant Religion.* Beside that it is a great Reflection upon their Prudence, and Conduct. And so every Expression in this Paper, do's clear up one another: and do's clear unanswerably, to all the World, that this Paper is *a Defaming of the Parliament, and a depraving of its Laws, and a moving of the People to a Dislike of it.* Which are the Words of the above cited *Statute.* And what can be a greater Depraving of a Law, then to make it *pravam legem*, a pernicious Law. And what can be more pernicious, then that Law which is *Inconsistent with the Protestant Religion?* and which Tyes men to *Swear things which are Contradictory?* and having affirmed all this upon Oath, and having dispersed these his Explications amongst the People, he did thereby shew a firm, and

and paſſionat Deſign, to make the People believe all theſe ill things of the Parliament. For no man uſes to Swear any thing to another, without a great Deſign to have him believe it. Nor do's any man diſperſe Papers amongſt the People, *for the Exoneration of his privat Conſcience.* Nor could he have any Deſign in that, ſave to Poiſon them with thoſe Jealouſies againſt the *Teſt*, to which he himſelf had ſhown ſuch an averſion in the whole Tract of the affair.

I cannot but ſmyle at Mr. *Miſts* Critical Learning, when he contends that the Earles Paper does only bear, that *the Earl did Take the Oath in ſo far as it was Conſiſtent with it Self, and the Proteſtant Religion.* But did not adject the Word *Only*, as the Libel does. For he who *Takes it in ſo far as it is Conſiſtent*, does *Take it only in ſo far.* And certainly the Author muſt confeſs, that either he Deſigned *to Take it further then it was Conſiſtent with the Proteſtant Religion*: or, *as far only as it was Conſiſtent with the Proteſtant Religion*, there being no midſt betwixt theſe two: and ſo our Critick may chooſe any of the two he pleaſes.

The third Cryme, is, Treaſon, which is Inferred from theſe Words; *I do declare I mean not to bind up my ſelf, in my ſtation, and in a lawful way, to wiſh, and endeavour any alteration, I think to the advantage of Church, and State. Nor Repugnant to the Proteſtant Religion, and my Loyalty: and this I underſtand as a part of my Oath.* Which Treaſon may be founded upon many Reaſons; yet to convince any Reader, in a plain, familiar, and unanſwerable way; I lay down

for a Position which I hope no man will deny; that all Nations have made it Treason, for any privat man to assume, or reserve to himself, the power of *Reforming Church and State*. For that is the highest Point of Government. Which how soon any privat man arrogats to himself, he becomes presently Governour of that Kingdom, and Superiour both in Church and State, therein. And therefore by the 1: *Act* 2: *Sess: Par:* 1: *Ch.* 2: and 1: *Act* 2: *Par: Ch:* 2: *The power of Reforming is declared His Majestis sole Prerogative*: and all the *Civilians* agree with us in this. *Inter cæteras sollicitudines* (*verba sunt* Theodosij & Valentiniani *in Novel: de Judæis sam: hab: & pag:*) *quas amor publicus pervigili cogitatione nobis indixit, præcipuam Majestatis curam esse perspicimus, veram religionis indaginem. Cujus si cultum tenere potuerimus, iter prosperitatis humanis aperiemus inceptis. vid. Ziegler: de jur: Majest. cap:* 13: *num:* 1: *Arnis: de jur: Majest: cap:* 6: *num:* 15. And which is most reasonable, for whoever pretends to have power of Reforming, must be greater then he who is Reformed. And we have found by woful Experience, that such as have endeavoured to Reform, have withdrawn themselves from the subjection of the Supream Power, under which they liv'd. And except they resolve to force the Supream Power as to this Point, there is no necessity of reserving a Power to themselves.

From all which, I form this Argument; *First*, It is Treason to any man to reserve to himself the power of Reforming Church or State, that being the Priviledge and Prerogative of the Prince, both by the Common Law,

Law, and the above-cited Statute: But ſo it is the Earl does reſerve to himſelf, in this Explication, a power of Reforming. And therefore he commits Treaſon.

The firſt Propoſition is founded upon the Nature of the Monarchy, and the Reaſons and Citations abovementioned.

The ſecond Propoſition is likewiſe very clear, becauſe he who reſerves to himſelf a Power to make any alteration, reſerves a Power to make all Alterations in Church and State. And conſequently reſerves a Power to Reform, in Matters of the greateſt Importance. For in all Languages, *Any*, comprehends *All*. As for Inſtance, Does not he who ſayes he'l do any thing for the King, ſay as much, as if he ſaid, I will do all things for him. Or does not he, who confeſſes he believes any thing that is in the Scripture, Imply that he believes all things that are in the Scripture. And conſequently, that Propoſition of the Earls, *viz. I intend not to bind up my ſelf from endeavouring any alteration, I think to the Advantage of Church and State.* Reſolves in, and is equivalent to this Propoſition. *I intend not to bind my ſelf up from making all alterations, that I ſhall think to the advantage of Church or State.* And if that be not Treaſon, nothing can be Treaſon.

The ſecond Argument is, That all Lawyers are clear, that it is Treaſon to attempt againſt the Security of the Government, *l 2. ff. ad l. Jul. Majeſt.* But ſo it is, that he who reſerves to himſelf a Power to Reform, attempts againſt the Security of the State. Which is clear by all the Civilians, Amongſt whom I ſhall only cite

Arniſeus, ad ſecuritatem Majeſtatis & Reipublicæ quietem nihil excogitari poteſt efficacius quam ſi ſumma religionis inſpectio Majeſtati reſervetur.

My third Argument in Fortification of the Statutes, formerly inſiſted on at the Debate. And for farther clearing the extent of that Alleadgance, that is required by the common Law, is founded upon *Act* 2. *Seſ.* 2. *Par.* 1. *Ch.* 1. The very words whereof are, *Therefore the Kings Majeſty and Eſtates of Parliament, Declare that theſe Poſitions, That it is lawful to Subjects, upon pretence of Reformation, or other pretence whatſoever, to enter into Leagues or Covenants, or to take up Arms againſt the King, or that it is lawful to Subjects, pretending his Majeſties Authority, to take up Arms againſt his Perſon, or theſe Commiſſioned by him: Or to ſuſpend him from the Exerciſe of His Royal Government: Or to put limitations on their due Obedience, and Alleadgance, are Rebellious and Treaſonable.*

In which Words it is obſervable, that it is not the doing of theſe Deeds, but the very aſſerting of theſe Poſitions, that it is Treaſon.

2*ly*, That no pretence or caution adjected to theſe Poſitions, can defend them from being Treaſonable.

3*ly*, That the Parliament thought it not ſufficient to acquieſce in the ſpecial Enumeration; But ſo Jealous were they of ſuch Tricks, that they ſubjoyn this general Clauſe, *That it ſhall be Treaſon to put Limitations, on their due obedience, and alleadgance.*

From which Words, I infer moſt clearly, that for a Subject, to declare he is not Tyed up, *To wiſh or endeavour any alteration*, is Treaſon, whatever pretence

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it be done upon. For *any alteration*, comprehends *all alterations*: and what man of common Senſe, or Ingenuity can deny, but this is a putting Limitations upon his Obedience, and Alleadgance, which is here declared Treaſon. For what is a greater Limitation, than to reſerve to himſelf to be Judge how far he is Tyed? And what Expreſſion or Limitation can be Treaſon by this general Clauſe, if this be not? Or of what uſe can this general Clauſe be, if it ſecure not againſt ſuch Limitations as this? Nor do I think this Limitation, wherein the Earl ſtill reſerves to himſelf to be Judge, a greater Security to the King, or Kingdom, than if a man ſhould tell me, that he would lock my Money in a ſecure place, but would keep the Key of it himſelf, In which caſe, I am ſure, he, and not *I*, were Maſter of that ney. 2*ly*, It being then Treaſon for any man to reſerve to himſelf the Power of making ſuch *alterations as he ſhall think for the advantage of Church and* State, viz. *not repugnant to my Loyalty, and the Proteſtant Religion.* The adjecting theſe Cautions cannot hinder this Paper to be Criminal; elſe,

1. The Covenant had not been Criminal, for the very Words of this Caution are in Covenant; The very Words of the Covenant being, *Art.* 1. *That we ſhall endeavour in our ſeveral Places and Callings, the Preſervation of the Reformed Religion.* And, *Art.* 3. *We ſhall with the ſame ſincerity, reality, and conſtancy, endeavour to preſerve and Defend the Kings Majeſties Perſon, and Authority: In the Preſervation, and Defenſe of the true Proteſtant Religion. That the world may bear witneſſe with our Conſciences, of our Loyalty, and that we have no Thoughts, nor Intentions to diminiſh His Majeſties juſt Power, or greatneſs.*

neſs. Here are the very ſame Expreſſions, accompanied with many moe, in favours of the King.

2*ly*, That cannot be a ſufficient Caution againſt Treaſon, which never hindred any man to commit Treaſon; but ſo it is, that notwithſtanding of theſe Words, all the Covenanters own'd that they might lawfully riſe in Arms, hold Parliaments, impoſe Taxes, and Oaths, enter into Leagues with forraign Princes, Hang and Head for Serving the King, *&c. Ergo*, Theſe Words are not a ſufficient Caution, when ſubjoyn'd as a Caution to the *power of Reforming.* Which is uncontraverted Treaſon in its ſelf. And did the great Proteſtations of Loyalty annexed to the Lord *Balmerino's* Petition, defend it from being condemn'd.

3*ly*, Do we not ſee dayly, that theſe who Rebelled in *anno* 1666. and 1679. did openly own, That they lov'd the King as well as their Accuſers did. But when he was in oppoſition to Religion, it was lawful to riſe in Arms againſt Him. So litle Security has the King in flowriſhing Profeſſions, when the Profeſſors are to be Judges.

4*ly*, The adjecting of this Proteſtation, is called by Lawyers, *proteſtatio contraria facto.* Which kind of Proteſtation, all Lawyers under Heaven reject, as inconſiſtent with the thing, to which they are adjected. And thus the League of *France*, was Treaſon, though they did aſſert under the deepeſt Proteſtations, the ſincereſt Loyalty.

5*ly*, By the foreſaid 4. *Act Par.* 1. *Ch.* 2*d.* All Gloſſes put upon the Laws of this Nation, in the late Rebelli-

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ous Parliaments, to the prejudice of their Alleadgance, are declared to be falſe, and diſloyal; and contrary to the true, and genuine meaning of theſe Acts. And particularly that Gloſs, or Explanation, that what they did, was for the Preſervation of Religion. Which is the very Explanation put by the Earl upon this Oath. And from which it clearly follows by a demonſtrative conſequence, that Explanations and Gloſſes put upon Oaths, and Acts of Parliament, contrary to the meaning of the Acts themſelves, are not to be reſpected. And being in Law holden and repute, as unlawful, they are ſo far from defending the Contraveeners, that they are themſelves lookt upon as new Crymes.

From all which, it clearly follows, that the Earl having reſerved to himſelf in this Explanation, a power to endeavour what he ſhould *think to the advantage of Church and State.* He did thereby commit Treaſon, and that this Treaſon is not taken off by the Cautions adjected, *viz.* The not Repugnancy to the Proteſtant Religion, and his own Loyalty.

Whereas it is pretended; *Firſt*, That Treaſon requires a ſpecial Law from, which it ought to be inferred, I deny this Poſition, for our Lybels are oftimes found Relevant on the common Law, and the Laws and Cuſtoms of Nations, and the nature of the Monarchy.

There was Treaſon before there was Law, for how ſoon Kings were Elected, it was Treaſon to riſe in Arms againſt them, or to Murder or Betray them; and many of our Laws being but lately made, declare oft times what has been Treaſon, not for neceſſity, but for the better Information of the Leidges. And though we have Laws de-

declaring it Treaſon, to ſeek Benefices at *Rome*; yet we have none declaring it Treaſon to aſſume the Title, or Power of the King in general, that being inherent in the nature of the Monarchy it ſelf, Treaſon is the Fenſe of the Government, as Murder is of privat mens Lives; and to riſe in Arms was Treaſon before the Statute, King *Ja.* 1. Nor have we yet any clear Statute againſt Murder: and if ſpecial Statutes were requiſit in every caſe of Treaſon, the greateſt Treaſon ſhould often eſcape unpuniſhed. For Law thought it unneceſſary to provide againſt theſe, and every age produces new kinds of Treaſonable Extravagancies; and Traitors would eaſily elude and cheat the expreſs Words of a Statue, if that were all that were neceſſary. But who can deny that the Juſtices condemned a man juſtly for Treaſon, for ſaying, when he was askt if the King was a Tyrant: let his Coronation Oath, and his Actions, and particularly his uſurping over the Church of Chriſt be compared: and that will be ſoon known. And yet here was no explicite aſſertion; but yet what all men eaſily underſtood, and which reproacht, and miſ-repreſented the King as much, as any open Expreſſion: and there was no Statute condemning that Expreſſion, expreſly. nor can there be a Law for every Expreſſion: But yet the Earls Treaſon is founded upon the expreſs Statute abovementioned.

And whereas it is pretended, 2*ly*, That the Earl might have as a Privy Counſellor, propos'd any thing to the King: and ſo a Reſervation was neceſſar upon that account.

To this it may be eaſily anſwered, that no Oath does hin-

hinder a man from doing what is Lawful; and ſo there needed be no Reſervation nor Exception upon that, or the like Conſideration. For an Exception muſt be of ſome thing that could oppoſe the Rule. But ſo it is the Oath which is the Rule in that Caſe, did not exclude any lawful Endeavours, at the deſire, or command of the Prince: and ſo there needed no Exception as to theſe. But the former argument ſtill Recurs, *viz.* He that will not bind himſelf up, as to any thing, reſerves a power as to all things, or at leaſt it muſt be Interpret of unlawful things: For lawful things need no exception. And if this were ſufficient, then the Parliament did unjuſtly, in declaring that it is Treaſon, to put limitations on our alleadgance: and that notwithſtanding of any pretence whatſoever. Nor could any man commit Treaſon, if that were allowed; for he himſelf would be ſtill Judge.

And whereas it is pretended, 3*ly*, That he diſclaims the Covenant, and riſing in Arms expreſly in this Oath; and ſo he could not reſerve any thing, as to theſe.

It is anſwered, that this were undenyable, if he took the Oath ſimply; but having taken the Oath only, *In ſo far as it is conſiſtent with it Self, and the Proteſtant Religion.* This Oath does not tye him, if he think the Proteſtant Religion ſhall require riſing in Arms. And having taken the Covenant, if he ſtill thinks the Covenant binds him, he renunces it not by his Oath: For this Oath tyes him only *as far as he can*; that is to ſay *as far as he is free:* and no man is free who thinks himſelf bound. And taking it only, *as far as it is conſiſtent with it*

 ſelf,

ſelf, God only, and the Earl knows how far that is; for he has not told us, how far *it is conſiſtent with it ſelf*; and very probably, ſuch as have taken the Covenant, think not that Oath *conſiſtent with the Proteſtant Religion*, in ſo far as it binds us not to take up Arms, if the Proteſtant Religion be in danger: and the Antiteſters Papers, Printed by Mr. *Miſt*, tell us plainly, that it is not *conſiſtent with it ſelf*, in ſo far as we ſwear to own the Succeſſor, though differing in Religion from us. And yet we ſwear to the preſervation of the Laws, of which the Coronation Oath is one. But whatever might have been ſaid in defenſe of ſuch Limitations, before we ſaw what dreadful effects they had produced, both in the laſt age, and this. And that Parliaments had ſo ſeverely condemned them as Treaſon. It is the duty of Judges to be ſevere to ſuch as uſe them, and they have only themſelves to blame, who ſplit on a Rock, when they ſee a Beacon ſet up to them. And it is much ſafer for the Common-wealth, that ſuch Papers be puniſhed, then that it ſhould be in danger by ſuch Reſervations, as leave every man Judge how far he is oblieged to Obey. And as there is great danger to the State on the one hand, if it paſſe unpuniſhed. So there is none on the other, ſeing men may be ſecure in abſtaining from ſuch Expreſſions, and Papers. And there was never any ſo unneceſſary as this was. And might not Strangers, and our own Poſterity, think all the miſeries that ſhould fall on us by Rebellions, and Civil Wars, very juſt puniſhments of our ſenſeleſſe Security, if after we had not only ſeen, but felt the miſchief of ſuch Gloſſes. We ſtood ſtill unconcernedly, as men ſeing

their

their own Houſe ſet on fire, by the ſame hands which had help't to burn it formerly.

If any by Ignorance, or Error, ſtumble into a Legal, tho undeſign'd Crime. The Law allows not Judges, by an inſolent pity to juſtifie the Guilt, but ſuffers the King by a Judicious Clemency, to mitigat, or remit the Puniſhment. In which the *Subjects* under Monarchy, are much happier than theſe of a Common-wealth, where, in many caſes the Law muſt be cruel, or Judges muſt be Arbitrary. This is that ſure City of Refuge, into which, no man who flees, periſheth. And if the Earl of *Argile*, had come in Will during the Debate, as uſe is. I am ſure he had been Securer there, than by his Defenſes.

But why ſhould I admire, that this Author, and thoſe of his Principles, do not ſee that this *Paper* is *Treaſon*. Since I dare ſay, they will not acknowledge that it is *Treaſon* to oppoſe the Succeſſion, and to ſay that it can be altered by a Parliament: and yet our Parliament unanimouſly thought that to be *Treaſon*. And in the laſt age, they thought it not Treaſon, but duty to riſe in Arms againſt the King, and to Call Parliaments without him. Though all the World abhorr'd us for it. So that the fault is not in our Parliaments, and Judges; but in the depraved Senſe, and debauched Intellectuals of ſuch, as have (by a long Cuſtom of hating Authority) bred in themſelves alſo, a hatred of every Perſon, and thing that can maintain it.

Since

Since then GOD Almighty amongst the other Miracles which he has wrought for his Darling, as well as Representative *CHARLES THE MERCIFUL*, begins to open the Eyes of the Blind, and to make some who were Crooked Walk Straight: Let us who Serve this gracious Monarch, Reason whilst His Enemies Rail; and be Just, whilst they are Extravagant: but withal, let us be asham'd, that they dare do more for Humour and Errors, than we for Duty and Law; and we may expect amongst other Rewards, which the Rabble has not to bestow; that we will get also that Applause which is alwise the Slave of Victory; and which of late seem'd to Fan them so pleasantly, meerly because they were like to prevail. And for which, too many of late sacrific'd their Honour, and Loyalty. VVithout remembring that tho just Applause, is an Elogie VVritten by the Hand of Vertue, and a Monument Built of solid Merit. Yet that Applause which is unjust, is only a sweet Poyson, a plausible Cheat, and the Dream of one who is Drunk.

FINIS.